

From: [Barnard, Megan](#)
To: [Aquind Interconnector](#)
Cc: [Maguire, Ian](#); [Williams, David](#); [Samuels, Tristan](#)
Subject: AQUIND - Portsmouth City Council - Fibre Optic Cables and Project of Common Interest
Date: 23 November 2020 16:12:45
Attachments: [20201123b PCC Letter re FOC PCI.pdf](#)

Afternoon,

On behalf of Portsmouth City Council (PCC), please find attached letter regarding a fundamental difference of opinion between PCC and other Interested Parties and the Applicant as to whether the commercial Fibre Optic Cables and associated infrastructure ('the FOC development') can properly amount to associated development as a matter of law pursuant to the Planning Act 2008; and also the consequence of the project no longer being recognised and listed as a Project of Common Interest pursuant to the TEN E Regulations.

Kind regards, Meg

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Our Ref: 20201123b

Date: 23/11/20

Via email to
aquind@planninginspectorate.gov.uk

FAO the Planning Inspectorate

Dear Sirs,

RE: Fibre Optic Cable Development and Project of Common Interest

PCC wishes to raise two matters of specific concern which have arisen during the examination and which currently it would appear the ExA has not raised as yet within its questions and within the agenda for the ISHs.

The first is there is a fundamental difference of opinion between PCC and other Interested Parties and the Applicant as to whether the commercial Fibre Optic Cables and associated infrastructure ('the FOC development') can properly amount to associated development as a matter of law pursuant to the Planning Act 2008. This is in PCC's submission a principal controversial issue.

The ExA has of course raised this matter within both their Examination Questions and queries to be discussed at ISH1 however what is not clear and has not been considered or addressed is the consequence of the ExA concluding that PCC and the other IPs are correct which PCC will urge them so to do.

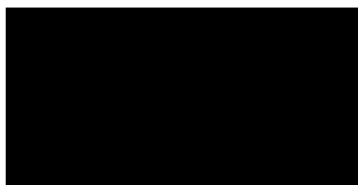
To be clear, the removal of the FOC development from the proposed development, if the applicant wishes still to pursue the Aquind interconnector project and the grant of a DCO, will have a fundamental impact upon the current DCO as drafted. PCC in raising this matter has taken into account the guidance provided in the judgment of Paterson J in R. (on the application of Halite Energy Group Ltd) v Secretary of State for Climate Change and Energy [2014] EWHC 17 as to DCO examinations and ensuring that all material matters are raised in a fair and transparent way. To that end PCC submits that the ExA needs to explore this issue with the applicant and the interested parties and in particular the opportunity be given to the applicant to provide its response to the clear potential conclusion by the ExA and thereafter the Secretary of State that the FOC development is not associated development.

The second matter which is also in PCC's submission of fundamental relevance to the examination and indeed the Aquind project as a whole, is the consequence of the project no longer being recognised and listed as a Project of Common Interest pursuant to the TEN E Regulations. It is PCC's understanding that this means the TEN-E regulations no longer apply. It is also PCC's understanding that this has not only procedural but financial consequences which will clearly be relevant to any Compulsory Acquisition case the applicant wishes to make but also generally as to the project's viability. In addition, whilst PCC has seen the CJEU judgment of 18 November in respect of Aquind's successful appeal against ACER's refusal to grant certain exemptions under the TEN-E regulations, it is not clear what Aquind now propose to do again in light of its loss of PCI status. Further, some of the grounds relied upon by Aquind in this appeal also have implications as to the viability of the interconnector scheme which PCC wishes to draw the ExA's attention to. Lastly, it is also not clear what support Aquind has now in France for its project in light of the same issues.

PCC recognises that these important and controversial issues and which may well be raised during the CA ISH but currently PCC is not aware that they are addressed let alone acknowledged in the evidence to date.

PCC asks the ExA therefore that both the above matters be considered by the ExA and suggests the ExA may wish to raise them within currently programmed or indeed additional Issue Specific Hearings.

Yours sincerely,



Ian Maguire
Assistant Director Planning & Economic Growth

Cc

David Williams, Chief Executive, Portsmouth City Council
Tristan Samuels, Director of Regeneration, Portsmouth City Council